Supreme Court, U.S.
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No. 00-932

IN THE

Supreme Court of the United States

GEORGE WATSON, JR.,

Petitioner,

v.

OCEAN COUNTY BOARD OF TRUSTEES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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13 pp

QUESTION PRESENTED

Petitioner has presented several questions to this Court, ranging from allegations of judicial racial profiling to violation of due process of the Fifth and Fourteenth Amendments of the United States Constitution. However, none of the questions presented by Petitioner were decided before the Third Circuit. The only question reviewed and decided upon by the Third Circuit is whether or not Petitioner's complaint was properly dismissed with prejudice.

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STATEMENT OF THE CASE

Respondents, Ocean County College Board of Trustees, James Holzapfel, Norma Paul, Vince Packer, Carol Gurdjian, Dr. Milton Shaw, John Whalen, Jan Shlala, Dean Robert Seymour, Dean John Weber, Dean John Kane, and Natalie Stites, (hereinafter "respondents"), accept the statement of the case set forth by Petitioner with the following clarifications and additions.

Petitioner, George Watson, filed an action in the Eastern District of Pennsylvania on November 28, 1992. On August 12, 1993 the case was transferred to the United States District Court, District of New Jersey. Respondents, Berry, Kagan and Sharadnik and the Equal Employment Commission, filed motions requesting a dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). Petitioner opposed the Motion to Dismiss and filed a Motion for Sanctions against Respondents. At oral argument on September 20, 1993, Petitioner indicated that he was in the process of retaining counsel and that he did not foresee any future problems. The Honorable Ann E. Thompson granted the motions with prejudice. Over the next seven months, Petitioner filed numerous motions with the District Court. In additional, Petitioner filed four Amended Complaints on the date the case was transferred to the District Court of New Jersey.

Petitioner then filed a series of motions. On September 21, 1993, Petitioner filed a second Motion for Sanctions. On October 1, 1993, Petitioner filed a Motion for Reconsideration of the New Jersey District Court's September 20 Order. On October 4, 1993, Petitioner filed a Motion to "deny dual representation". On October 27, 1993, Petitioner filed a Motion to Vacate the District Court's September 21, 1993 Order. On October 27, 1993, Petitioner filed another Motion to Deny Dual Representation. In Orders dated October 12, 1993 and

December 6, 1993, the District Court warned Petitioner that frivolous motions and improper filings would not be tolerated and could result in Rule 11 sanctions.

In his Order of November 8, 1993, the Honorable John J. Hughes, United States Magistrate Judge, found that Petitioner had failed to comply with F.R.C.P. 8 because his Complaint was disjointed, poorly drafted and generally incoherent. Judge Hughes ordered Petitioner to file an Amended Complaint and gave him specific instructions on how to do so properly. Petitioner was given 20 days within which to file the Complaint. Judge Hughes further warned that Petitioner's failure to comply with the Court's Order could result in a dismissal of the action with prejudice.

On January 6, 1994, more than one month after the deadline imposed by Judge Hughes, Petitioner filed his fifth Amended Complaint. The fifth Amended Complaint was almost identical to the previously filed Complaint.

On January 27, 1994, Respondents filed a Motion to Dismiss, returnable March 7, 1994. This District Court of New Jersey received a Mailgram dated February 14, 1994 from Petitioner requesting an extension to time within which to oppose the motion as his leg was in a cast. By Letter Order dated February 23, 1994, the District Court adjourned the motion until March 28 and extended the due date of Petitioner's opposition until March 7, 1994. On March 16, 1994, nine days after Petitioner's opposition was due, Petitioner submitted a sixth Amended Complaint. The Clerk of the Court returned the papers because they were not originals and because Petitioner had not sought leave of the Court to file a sixth Amended Complaint.

On March 7, 1994, Petitioner sent the District Court a second Mailgram requesting certification of a plaintiff's class.

The Mailgram was not filed with the Clerk's office and failed to include briefs or certifications as required by the Rules.

Oral argument on Respondent's January 27, 1994 Motion to Dismiss was held on March 28, 1994. Petitioner was made aware of the date. Counsel for Respondents were present before the District Court at 10:00 A.M. The Court held the Motion until the end of its motion calendar. Petitioner failed to appear. Judge Thomas in her nine page Order dated April 14, 1994, reviewed the standard to dismiss an action under Rule 41(b). Despite the Court's finding that every factor weighed in favor of dismissing Petitioner's Complaint with prejudice, the Court dismissed the Complaint without prejudice. Judge Thompson reminded Petitioner that any new filings must adhere to the Federal Rules of Civil Procedure and the New Jersey Federal Practice Rules, as well as the Court's prior Orders.

Thereafter, on October 20, 1997, Petitioner filed another pro se Complaint with the United States District Court for the District of New Jersey. On February 24, 1999, Respondents filed an Answer with the United States District Court for the District of New Jersey.

On or about March 8, 1999, Respondents filed a Motion to dismiss Petitioner's Complaint. The Motion was returnable on April 19, 1999. While this Motion was pending, Petitioner filed a Notice of Motion on or about July 9, 1999 requesting reconsideration for class action status. Petitioner failed to file a brief in support of his Motion. Instead, Petitioner supplied a Certification and a note on the bottom of the Notice of Motion stating "Re: No Brief is needed in my opinion. GW." Respondents opposed the Motion.

Thereafter, District Court Judge Garrett Brown, Jr. issued a Memorandum of Opinion and Order dated August 13, 1999 dismissing Petitioner's Complaint with prejudice. Judge Brown weighed the six factors as articulated in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (Third Circuit 1984) and opined that dismissal with prejudice of Petitioner's Complaint was warranted.

On May 23, 2000, the United States Court of Appeals for the Third Circuit affirmed the Order of the District Court of New Jersey dismissing Petitioner's Complaint with prejudice.

On or about October 5, 2000, Petitioner applied to this honorable Court for a Writ of Certiorari. His petition was returned for failing to comply with the rules of this honorable Court, and he was given sixty days to conform his petition to the rules of this Court.

REASONS FOR DENYING THE WRIT

Petitioner has presented several questions to this Court, ranging from allegations of judicial racial profiling to violation of due process of the Fifth and Fourteenth Amendments of the United States Constitution. Petitioner argues that the Third Circuit's opinion improperly applies *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863 (3d Cir. 1984) in dismissing Petitioner's Complaint for Petitioner's failure to comply with Court Rules and prior Court orders, pursuant to Federal Rule of Civil Procedure 41(b). According to Petitioner, the Third Circuit's holding discriminates against pro se litigants, violates petitioner's right to Due Process under the Fifth and Fourteenth Amendments of the United States Constitution, and is evidence of judicial racial profiling by the Third Circuit. However, the Third Circuit's Opinion does not so hold. The numerous questions presented

by the petitioner arise from Petitioner's own view of the judicial process, and not from the opinion issued by the Third Circuit. Neither the Third Circuit's actual ruling nor the record below raised the questions presented by the Petition. The Third Circuit's ruling is not in conflict with either *Poulis v. State Farm Firm and Cas. Co.*, or Rule 41(b) of the Federal Rules of Civil Procedure. The Third Circuit's ruling was proper in all respects and respondents respectfully urge this Honorable Court to deny the Petitioner a Writ of Certiorari.

I. NEITHER THE RECORD NOR THE DECISION BELOW RAISE THE QUESTION PRESENTED BY THE PETITION.

Petitioner has presented numerous questions before this honorable Court. Petitioner's legal argument supporting the issuance of Petition revolves around the allegation by petitioner that he has been deprived due process under the Fifth and Fourteenth Amendment, and that he was terminated from his job for exercising his First Amendment freedoms. However, Petitioner's questions were not considered by the Third Circuit. The only question considered by the Third Circuit was whether or not Petitioner's Complaint was properly dismissed with prejudice by the Honorable Garrett E. Brown, Jr. of the United States District Court, District of New Jersey.

The Third Circuit stated in their opinion that the only question presented by Petitioner's appeal to the Third Circuit was "whether the District Court erred in applying the governing legal standard when it dismissed Petitioner Watson's pro se complaint with prejudice". The Third Circuit upheld the United States District Court, District of New Jersey's decision to dismiss Petitioner's complaint with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. That holding was proper in all respects and does not call for a review by this Court.

II. THE THIRD CIRCUIT'S RULING DOES NOT CONFLICT WITH EITHER RULE 41(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE OR *POULIS v. STATE FARM FIRE AND CAS. CO.*

In the Third Circuit, Petitioner argued that the United States District Court improperly dismissed his complaint. In upholding the ruling of the United States District Court, the Third Circuit heavily relied upon the Opinion of the Honorable Garrett E. Brown, Jr., of the United States District Court. Judge Brown provided a thorough analysis of the factors to be considered in dismissing a plaintiff's Complaint. Judge Brown's decision began with the discussion of Federal Rule of Civil Procedure, Rule 41(b). Rule 41(b) states, "For failure of the plaintiff to prosecute or comply with rules or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant." In his opinion, Judge Brown states that, while the decision of whether or not to invoke the sanction of dismissal is entirely within the discretion of the District Court, the Court must weigh and balance the six factors set forth by the Third Circuit in *Poulis v. State Farm Fire and Cas. Co.* to decide if dismissal of the Petitioner's complaint for lack of compliance with Court rules and orders is appropriate. The six factors to be considered under *Poulis* are: (1) The extent of the parties' personal responsibility; (2) The prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of all alternative sanctions; and (6) the meritoriousness of the claim or defense. Judge Brown then provided an in-depth analysis of each of the *Poulis* factors.

The first *Poulis* factor, that of the parties' personal responsibility, was found to be satisfied by the facts. Petitioner was appearing before the Third Circuit pro se, and therefore there was no one with responsibility for violation of Court Rules and Orders other than the Petitioner himself. Judge Brown found that the Petitioner had failed to provide the Court with any explanation as to why he is unable to comply with the applicable Court Rules and Orders.

The second *Poulis* factor, prejudice to the adversary caused by plaintiff's failure to comply, was also found to be satisfied by Judge Brown. Respondents in this matter have incurred substantial legal fees in an effort to determine the true basis of Petitioner's complaint, and in an effort to respond to all of Petitioner's various motions. Because of this, the United States District Court found sufficient prejudice to Respondents.

The third *Poulis* factor, that of a history of dilatoriness, was also found to have been met. Throughout the six years in which this matter has been pending, Petitioner exhibited a pattern of non-compliance with procedural requirements and a failure to correct efficient motions. This is emphasized by Petitioner's failure to file any opposition to the respondent's Motion before the United States District Court to dismiss Petitioner's Complaint. After six years of filing complaints, the United States District Court found that the gravamen of Petitioner's complaint was still unascertainable.

The fourth *Poulis* factor is met through willful behavior by the Petitioner or bad faith. While the United States District Court found no evidence of bad faith, the Court did find that Petitioner's conduct was willful in regard to his repeated disregard for the Federal Rules of Civil Procedure, as well as the Orders of the United States District Courts and other Courts within the District of New Jersey.

The fifth *Poulis* factor concerns the effectiveness of sanctions less drastic than dismissal. The United States District Court found, in an exercise of its discretion, that sanctions in the form of attorney fees against the Petitioner, or imposition of respondent's full costs on Petitioner for delays and unnecessary efforts would not deter Petitioner's future dilatoriness or encourage compliance by him in the proceedings. The United States District Court based this finding upon Petitioner's extensive litigation history and his failure to oppose Respondent's Motion to Dismiss Petitioner's complaint, coupled with the Court's difficulty in understanding the gravamen of Petitioner's Complaint. The sixth and final *Poulis* factor analyzed by Court deals with the meritoriousness of Petitioner's claim. Despite allowances made for pro se filings by United States District Court, the Court could not find a legal basis for Petitioner's complaint. Judge Brown stated in his Decision, "Although Petitioner's complaint appears to allege racial discrimination by respondent's, the majority of Petitioner's factual allegations, as set forth in his complaint do not seem to constitute illegal acts by respondents."

The Third Circuit agreed with the reasoning of the District Court and adopted it as their holding. The Third Circuit found that

> all of the factors discussed above weigh in favor of dismissal. Most significant, perhaps is the fact that Petitioner is solely responsible for the non-compliance with court rules and orders in this action to date. Additionally, due to the amount of time that has passed between the actions of which Petitioner complains and the present, the prejudice to Respondents is ever increasing, and this is the result of Petitioner's conduct

> and no fault of respondents. Furthermore, the imposition of lesser sanctions in this action would prove neither just nor workable. Balancing these six factors, the Court finds that dismissal of this action for failure to comply with applicable Court Rules and Orders, pursuant to Federal Rule of Civil Procedure 41(b), is appropriate.

The Third Circuit's holding is correct and is not at odds with *Poulis v. State Farm Fire and Cas. Co.*, or Federal Rule of Civil Procedure 41(b).

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request this Honorable Court deny the Petition.

Respectfully submitted,

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